

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

REMBRANDT ENTERPRISES, INC,)	
)	
Counter Claimant,)	
)	
v.)	No. 3:17-cv-00141-JMS-MPB
)	
REXING QUALITY EGGS,)	
LEO R. REXING,)	
DYLAN REXING,)	
JOSEPH L. REXING,)	
)	
Counter Defendants.)	

EXHIBIT 3 - PROPOSED FINAL INSTRUCTIONS THAT APPLY TO ALL CLAIMS

Members of the jury, the preliminary instructions I gave you at the beginning of the trial remain in effect. I now am going to read the final jury instructions. It is your duty to follow all of the instructions. You must not single out some instructions and ignore others because all are important. A copy of both the preliminary and final jury instructions will be available to you in the jury room during your deliberations.

Final Instruction No. 1

You have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow the Court's instructions, even if you disagree with them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, or public opinion to influence you.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

Final Instruction No. 2

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence [and stipulation[s]].

[A stipulation is an agreement between both sides that [certain facts are true] [that a person would have given certain testimony].]

[I have taken judicial notice of certain facts. You must accept those facts as proved.]

Final Instruction No. 3

Certain things are not to be considered as evidence. I will list them for you.

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

Final Instruction No. 4

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

Final Instruction No. 5

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact or a series of facts that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago, and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

Final Instruction No. 6

When I say a particular party must prove something by “the greater weight of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

Final Instruction No. 7

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness' memory;
- any interest, bias, or prejudice the witness may have;
- the witness' intelligence;
- the manner of the witness while testifying; and
- the reasonableness of the witness' testimony in light of all the evidence in the case.

Final Instruction No. 8

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

Final Instruction No. 9

[Begin case specific instructions.]

Final Instruction No. 10

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against a particular party, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

Final Instruction No. 11

Upon retiring to the jury room, select one of your members as your presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

A verdict form has been prepared for you.

Take the form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in the verdict form and date it.

When you wish to return your verdict, notify the bailiff in writing.

Final Instruction No. 12

Once you start deliberating, do not communicate about the case or your deliberations with anyone except other members of your jury. You may not communicate with others about the case or your deliberations by any means. This includes oral or written communication, as well as any electronic method of communication, such as such as a telephone, cell phone, smart phone, iPhone, Android, Blackberry or similar device, computer, the Internet, text messaging, chat rooms, blogs, social networking websites like Instagram, Snapchat, Facebook, LinkedIn, YouTube, or Twitter, or any other form of communication.

If you need to communicate with me while you are deliberating, send a note through the bailiff. The note should be signed by the presiding juror, or by one or more members of the jury. To have a complete record of this trial, it is important that you do not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You may continue your deliberations while you wait for my answer. Often the Court cannot answer a question except by re-reading the jury instructions, so you may find an answer to any question you have in the instructions. Please be advised that transcripts of trial testimony are not available to you. You must rely on your collective memory of the testimony.

If you send me a message, do not include the breakdown of any votes you may have conducted. In other words, do not tell me that you are split 4-4, or 6-2, or whatever your vote happens to be.